Central Intelligence Agency

Washington, D.C. 20505

13 September 2013

Mr. Michael Morisy
MuckRock News
DEPT MR 6522
P.O. Box 55819
Boston, MA 02205-5819

Reference: F-2013-02458

Dear Mr. Morisy:

On 22 August 2013, the office of the Information and Privacy Coordinator received your 22 August 2013 Freedom of Information Act (FOIA) request for **a copy of the meeting minutes from meetings of the Intelligence Advisory Committee during 1950, 1951, and 1952**. We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

I must consider your request for a fee waiver under the standards the Agency FOIA regulations outline, which you will find at Part 1900 of Title 32 of the Code of Federal Regulations, and Department of Justice guidance. I have reviewed your request under those standards to determine "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Your request does not meet these standards because disclosing the information you seek is not "likely to contribute significantly to public understanding of the operations or activities of the United States Government." I therefore deny your request for a fee waiver.

You may appeal this decision, in my care, within 45 days from the date of this letter. Should you choose to appeal the denial of your request for a fee waiver, you are encouraged to provide an explanation supporting your appeal. Agency regulations also specify that if the Agency has started to process a request, the Agency may only accept an appeal of a fee waiver denial if the requester agrees to be responsible for the costs in the event of an adverse administrative or judicial action.

In your request, you assert that MuckRock News is a representative of the news media as defined in the FOIA. On the basis of all the information available, including Central Intelligence Agency regulations that implement the FOIA, the OPEN Government Act of 2007, the guidelines issued by the Office of Management and Budget, 52 Fed. Reg. 10012 (Mar. 27, 1987) (OMB Fee Guidelines), and the administrative record of this request, we determined that MuckRock News does not meet the necessary standards for designation as a "news media" entity.

In making a determination of fee category, we evaluate requester fee categories on a case-by-case basis. As noted above, we determined that you have failed to meet the requirements of the "news media" fee category and therefore will be charged fees based on the "all other" fee category. An agency's determination of fee category is based on both the identity of the requester as well as "the use to which [requesters] will put the information obtained" (See 5 U.S.C. § 552(a)(4)(A)(ii); see also OMB Fee Guidelines, 52 Fed. Reg. 10,012, 10,013 (Mar. 27, 1987)).

For your information, the FOIA provides for three categories of requesters. (See 5 U.S.C. § 552(a)(4)(A)(ii)). The OPEN Government Act of 2007 defines "a representative of the news media" as a "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience" (OPEN Government Act § 3; see also Nat'l Sec. Archive v. DOD, 880 F. 2d 1381, 1387). Furthermore, OMB Fee Guidelines define news as "information that is about current events or that would be of current interest to the public" (OPEN Government Act § 3; see also OMB Fee Guidelines, 52 Fed. Reg. at 10,018).

The D.C. Circuit held that "making information available to the public is insufficient to establish an entitlement to preferred [fee] status" (Nat'l Sec. Archive v. DOD, 880 F.2d at 1386 (D.C. Cir. 1989). Specifically, the "news media" category excludes "'private repositories' of government records or middlemen such as 'information vendors [or] data brokers'" who request records for use by others (Nat'l Sec. Archives v. DOD, 880 F.2d 1381, 1387).

MuckRock News provides an online service to track the progress of FOIA requests submitted via the MuckRock News website. The resulting publication on MuckRock News contains the raw materials received via the FOIA request without analysis or application of editorial skills. Therefore, MuckRock News serves only as an intermediary providing a repository of the requested information for the use of others.

Typically, the underlying requester is the basis for fee category determination, not the requester's representative. When an agency is unable to determine the category based on the available information that agency may "seek additional clarification" (OMB Fee Guidelines, 52 Fed. Reg. at 10,018). Because the use of the MuckRock News service is available to anyone, regardless of the underlying requester's fee category, we can only evaluate the appropriate fee category of MuckRock News. If MuckRock News is intended as the representative of the underlying requester, we require additional information identifying that individual.

In conclusion, we determined that your request falls into the "all other" fee category, which may require you to pay charges to cover the cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time, which are free. Copies are ten cents per page. Enclosed is a copy of our fee schedule for your review and retention.

Before we can begin processing your request, **we must receive your commitment to pay all fees** incurred under the conditions stated above. We will hold your request in abeyance for 45 days from the date of this letter pending your response.

Sincerely,

Michele Meeks
Information and Privacy Coordinator

Enclosure

CENTRAL INTELLIGENCE AGENCY

32 CFR Parts 1900, 1901, 1907, 1908, and 1909

Freedom of Information Act; Privacy Act; and Executive Order 12958;Implementation Agency: Central Intelligence Agency.

ACTION: Interim rule.

§1900.02 Definitions

For purposes of this part, the following terms have the meanings indicated:

(a) Agency or CIA means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) Days means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) Control means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records,

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Freedom of Information Act;

(e) *Direct costs* means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space, it does include:

(1) *Pages* means paper copies of standard office size or the dollar-value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions, but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar-value equivalent in computer searches;

(f) *Expression of interest* means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from the CIA;

(g) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C 552(f);

(h) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the Agency in determining the proper fee category and the Agency may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income, or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(4) *All other* means a request from an individual not within paragraph (h)(1), (2), or (3) of this section;

(i) *Freedom of Information Act* or "FOIA" means the statutes as codified at 5 U.S.C 552;

(j) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(k) Originator means the U.S. Government official who originated the document at issue or successor in office, or such official who has been delegated release or declassification authority pursuant to law;

(l) *Potential requester* means a person, organization, or other entity who submits an expression of interest;

(m) *Reasonably described records* means a description of a document (record) by unique identification number or descriptive terms which permit an Agency employee to locate documents with reasonable effort given existing indices and finding aids;

(n) *Records* or *agency records* means all documents, irrespective of physical or electronic form, made or received by the CIA in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the CIA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the CIA or because of the informational value of the data contained therein; it does not include:

(1) *Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials* acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by the Agency, they are fully subject to the disclosure provisions of the FOIA;

(2) *Index, filing, or museum documents* made or acquired and preserved solely for reference, indexing. filing. or exhibition purposes; and

(3) *Routing and transmittal sheets and notes and filing or destruction notes* which do not also include information, comment, or statements of substance;

(o) *Responsive records* means those documents (i.e., records) which the Agency has determined to be within the scope of a FOIA request.

§1900.13 Fees for Record Services

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or if some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever the Agency determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and